IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4927 of 2005

Between:

M/s. Vignan Education Development Society, N.H.5, Prakash Nagar, Doddavarpadu, Ongole-523211,
rep.by its Director, Ch.Girinadh S/o.Surya prakasha Rao,
R/o.Ongole Prakasam District.

... PETITIONER

AND

1 The Assistant Provident Fund Commissioner & Authority

O/o.Regional Provident Fund Commissioner, Employees
Provident Fund Organisation, Sub-Regional office,
Padmavathi Buildings, lakshmipuram, Guntur-7.
2 Enforcement officer, O/o.Employees Provident Fund

Organisation Ravi Complex, 2nd floor, Miriyalapalem,

Trunk Road, Ongole
3 The Station House officer, Doddavarappadu post,

Maddipadu Mandal, Prakasam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the connected records from the respondents and issue an appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring warrant of arrest of the petitioner establishment through the Impugned order NO.AP/GT 4033/Enf Com III/2005/3705, dtd.24-2-2005 issued by the 1st respondent through 3rd respondent as illegal, arbitrary and un warranted as there is no such statutory provision provided under the said EPE & MP Act 1952 and the scheme and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.N.VENKATRAMA REDDY

Counsel for the Respondents: SMT.CH.LAKSHMI KUMARI, STANDING COUNSEL

The Court at the stage of admission made the following :

O R D E R:

The petitioner is an Educational Society, functioning at Ongole, Prakasam District. The Assistant Provident Fund Commissioner, Guntur, initiated proceedings against the petitioner, for determination of amounts payable towards contribution to the Provident Fund. A letter dated 19.09.2003 was issued to the petitioner, directing it to furnish information in Form 5-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The matter was not pursued with any vigor for some time. On behalf of the petitioner, a reply was submitted on 20.01.2005, stating that it is not covered by the provisions of the Act. The first respondent issued a warrant of arrest to the petitioner, and the same was sought to be enforced by the third respondent, the Station House Officer, Doddavarappadu, Prakasam District. The petitioner challenges the same.

Learned counsel for the petitioner submits that the warrant of arrest, dated 24.02.2005, discloses a clear case of non-application of mind and gross misuse of powers. He contends that the arrest warrant was issued on 24.02.2005, on account of the alleged violation of the petitioner to produce the records on 1.03.2005. He contends that even if there was any failure on the part of the petitioner, it was open to the first respondent to pass an ex parte order, and that there was no occasion for issuing warrant under Section 7-A of the Act.

Smt.Laxmi Kumari, learned Standing Counsel for the first respondent, submits that even after the issuance of notice for submission of the records, the petitioner did not respond, and the first respondent was left with no alternative, except to issue warrant of arrest.

The warrant referred to above was issued in exercise of powers under Section 7-A of the Act. It confers powers of civil court on the first respondent, in the matter of enforcing attendance of persons, discovery and production of documents, receiving evidence on the affidavit, issuing commission for examination of witnesses etc. For all practical purposes, the first respondent can be treated as a civil court in the

context referred to above.

The first respondent initiated proceedings for determination and ascertainment of the amounts payable by the petitioner. The petitioner virtually answers the discretion of the defendant in the suit. Even in a case where the defendant fails to respond to the notices issued by it, the court cannot order the arrest of a defaulting defendant. The court can draw an adverse inference and pass an ex parte order. When the civil court does not have the power to get the defendant arrested, on the sole ground that he did not respond to the notice issued by it, the question of first respondent directing arrest of the petitioner on such a ground does not arise. At the most, he could have passed an ex parte order, fastening the liability on the petitioner. Therefore, issuance of arrest warrant against the petitioner discloses gross misuse of powers by the first respondent, or lack of proper understanding of the provisions. This court takes serious exception to the manner in which the first respondent exercised powers under Section 7-A of the Act.

Even assuming that such a power exists in the first respondent, it needs to be seen as to how far its exercise is justified in the present case. The warrant of arrest is dated 24.02.2005. The reason for issuing warrant is stated in it, in the following terms:

> "Whereas, show cause notice of warrant of arrest was also issued on 24.01.2005 directing the employer to appear before the undersigned on 4.02.2005 and to produce the summoned records. Further, the employer was informed that if he fails to attend the inquiry and produce the summoned records, warrant of arrest will be issued without further notice.
>
> Whereas the employer has failed to appear and produce the summoned records on 1.03.2005."

This court only wishes that the copy of the arrest warrant filed by the petitioner does not reflect the original. If it is true copy of the warrant actually issued by the first respondent, it clearly discloses non-application of mind. Issuance of warrant on 24.02.2005, on the ground that the petitioner did not produce the record on 1.03.2005, presents a clear cut case of non-application of mind, or gross misuse of power.

For the foregoing reasons, the writ petition is allowed and the warrant of arrest is set aside. It is held that the first respondent does not have the power to get any

employer arrested, on the sole ground that the employer did not respond to the notices in the proceedings initiated for determination of the contribution. To avoid further complications and delay in the matter, the petitioner shall appear before the first respondent on 28.03.2005, and the proceedings before the first respondent shall be conducted strictly, in accordance with law. There shall be no order as to costs.

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11th March 2005

Note: Issue copy in three days

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(B/o)

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To

(One Fair copy to the Hon'ble Mr.Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1 The Assistant Provident Fund Commissioner & Authority,

O/o.Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Sub-Regional office, Padmavathi Buildings, lakshmipuram, Guntur-7.

2 The Enforcement officer, O/o.Employees Provident Fund

Organisation Ravi Complex, 2nd floor, Miriyalapalem,

Trunk Road, Ongole

3 The Station House officer, Doddavarappadu post,

Maddipadu Mandal, Prakasam District.

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5 The Under Secretary, Ministry of Law, Justice and

Company Affairs, Union of India, New Delhi.

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